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RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 98-01282

[REDACTED]  
[REDACTED]  
COUNSEL: [REDACTED]

DEC 18 1998

HEARING DESIRED: YES

Applicant requests that his disability discharged be changed to permanent disability retirement. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant and counsel for review and response (Exhibit D). As of this date, no response has been received by this office.

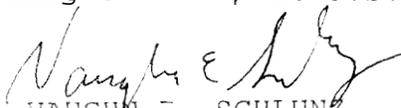
After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been rebutted by applicant or counsel. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board, Mr. Vaughn E. Schlunz, Mr. Kenneth L. Reinertson, and Mr. Edward C. Koenig, II considered this application on 17 December 1998, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10 U.S.C. 1552.

  
VAUGHN E. SCHLUNZ  
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. SAF/MIBR Ltr Forwarding Advisory Opinions

August 3, 1998  
98-01282

MEMORANDUM FOR AFBCMR

FROM: BCMR Medical Consultant  
1535 Command Drive, EE Wing, 3rd Floor  
Andrews AFB MD 20762-7002

SUBJECT: Application for Correction of Military Records  
[REDACTED]

Applicant's entire case file has been reviewed and is forwarded with the following findings, conclusions and recommendations.

**REQUESTED ACTION:** The applicant was separated with 20% disability severance pay on 19 Nov 96 for ankylosing spondylitis after serving 5 years, 6 months and 13 days on active duty. He applies now for a permanent disability retirement based on what the Department of Veterans Affairs (DVA) has allowed.

**FACTS:** The applicant served as an aircraft mechanic and was initially seen in the orthopedic service in October 1995 with complaints of back pain dating back two to three years. He underwent a thorough evaluation including rheumatology consultation which resulted in his condition being considered a seronegative spondyloarthropathy (i.e., no demonstrable rheumatoid or other identifiable inflammatory reason for the spinal condition). X-rays of the spine were negative, and continued to be negative at the time of subsequent DVA evaluation. His condition interfered with performance of his military duties, and he met a Medical Evaluation Board on 17 Sep 96 with referral to the Informal Physical Evaluation Board (**IPEB**) who recommended separation with 20% disability severance pay based on his diagnosis, his current physical findings, and his potential for on-going problems. The applicant readily accepted this recommendation, and was separated with severance pay of \$15,631.20, as noted on his DD Form 214. A psychiatric diagnosis of dysthymia (alternating mood swings) was considered by the IPEB and found not unfitting, so no compensation was awarded for it.

Upon presentation to the DVA, the applicant was evaluated at 60% disabled from the spondylitis (in spite of their negative x-ray studies and the applicant's minimal symptoms and physical findings), 30% for depression suffered since relating to his separation and home and work difficulties, 10% for athlete's foot, and 10% for tinnitus, a combined rating of 80%. It is this rating that leads the applicant to seek permanent disability retirement.

**DISCUSSION:** The reason why the applicant could be found 20% disabled by the Air Force and later be granted 80% service-connected disability by the DVA lies in understanding the differences between Title 10, USC, and Title 38, U.S.C. Title 10, U.S.C., Chapter 61 is the federal statute that charges the Service Secretaries with maintaining a fit and vital force. For an individual to be considered unfit for military service, there must be a medical condition so severe that it prevents performance of any work commensurate with rank and experience. Once this determination is made, namely that the individual is unfit, disability rating percentage is based upon the member's condition at the time of permanent disposition, and not upon possible future events. Congress, very wisely, recognized that a person can acquire physical conditions which,

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although not unfitting at the time of separation, may later progress in severity and alter the individual's lifestyle and future employability. With this in mind, Title 38, USC which governs the DVA compensation system was written to allow awarding compensation ratings for conditions that are not unfitting for military service. This is the reason why an individual can be considered unfit for military duty at a particular disability rating, and yet soon thereafter receive a compensation rating from the DVA for service-connected, but militarily non-unfitting conditions in addition to the rating for which the individual was separated. The evidence presented at the time of the applicant's disability system evaluation clearly indicated only subjective evidence of impairment with no laboratory or x-ray evidence of significant spinal disease. Evidence of record establishes beyond all reasonable doubt that the applicant was properly evaluated and rated at the time of his separation, that the reason for his separation was proper, and that no error or injustice occurred in this case.

**RECOMMENDATION:** The BCMR Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

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Chief Medical Consultant, AFBCMR  
Medical Advisor SAF Personnel Council

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE, TEXAS

14 Sep 98

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPD  
550 C Street West Ste 06  
Randolph AFB TX 78150-4708

SUBJECT: Application for Correction of Military Records [REDACTED]  
[REDACTED]

REQUESTED ACTION: Applicant requests that his Nov 96 disability discharge be set aside and he receive a disability retirement.

FACTS: Applicant was involuntarily relieved from active duty for physical disability under the provisions of AFI 36-3212. Member completed five years six months, and thirteen days of active duty. At the time of his discharge, member received \$15631.20.

On 19 Nov 96, member was discharged with severance pay with a 20 percent disability rating. His request for a disability retirement is based on a subsequent higher disability rating received from the Department of Veterans Affairs (DVA) for numerous conditions which were not unfitting at the time of his separation.

DISCUSSION: The purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their office, grade, rank or rating. Members who are separated or retired for reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. Eligibility for disability processing is established by a Medical Evaluation Board (MEB) when that board finds that the member may not be qualified for continued military service. The decision to conduct an MEB is made by the medical treatment facility providing care to the member.

An MEB was convened at Eglin AFB, Florida on 17 Sep 96 and referred to the Informal Physical Evaluation Board (IPEB). On 27 Sep 96, the IPEB found the member unfit for continued military service for a diagnosis seronegative spondyloarthritis and recommended he be discharged with severance pay with a 20 percent disability rating. Applicant concurred with the findings and recommendation of the IPEB and subsequently officials within the Office of the Secretary of the Air Force directed that the applicant be discharged with severance pay and a 20 percent compensable disability rating under the provisions of Title 10, USC, Section 1203.

The reason why an applicant could receive noticeably different disability ratings from the Air Force and the VA lies in understanding the differences between Title 10, USC, and Title 38, USC. Title 10, USC, Chapter 61, is the federal statute that charges the Service Secretaries with

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maintaining a fit and vital force. For an individual to be unfit, there must be a medical condition so severe that it prevents performance of work commensurate with rank and experience. Once this determination is made, namely that the individual is unfit, the degree of disability is based upon the member's condition at the time of permanent disposition and not upon possible future events. Congress very wisely recognized that a person can acquire physical conditions which, although not unfitting, alter the individual's life style and future employability. With this in mind, Title 38, USC, which governs the VA compensation system, was written to allow awarding compensation for conditions that are not unfitting for military service. This is the reason why an individual can be found fit for military duty and later receive a compensation rating from the VA for a service-connected, non-unfitting condition.

A thorough review of the AFBCMR file revealed no errors or irregularities in the processing of the applicant's case within the disability evaluation system. He was appropriately found unfit for continued military service and properly rated under federal disability rating guidelines. The medical aspects of this case are fully explained by the Medical Consultant; we agree with his advisory.

RECOMMENDATION: We recommend denial of the applicant's request. The applicant has not submitted any material or documentation to show he was inappropriately rated or processed under the military disability evaluation system at the time of his disability discharge.

  
\_\_\_\_\_, USAF  
Chief, Physical Disability Division  
Directorate of Pers Prog Management

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